Supreme Court, U.S.
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NO. 95-1625

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

JOANNE BRITO BOYCE, et al.,
Petitioner,

v.

JOHN W. GREENWAY,
Respondent,

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS
FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals erred in holding that a motorboat is not a "motor vehicle," within the meaning of such phrase as it is used in Bankruptcy Code §523(a)(9).

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit in this case is reported at 71 F.3d 1177 (5th Cir. 1996), the opinion of the District Court is reported at 180 B.R. 179 (W.D.Tex. 1995), and the opinion of the Bankruptcy Judge in support of his summary judgment is found in the Record, pages 431 to 436.

STATEMENT OF THE CASE

Although Petitioners generally correctly describe the proceedings below, the following corrections of Petitioners' misstatements are hereby noted pursuant to Supreme Court Rule 15.2:

The indebtedness here at issue is a 1993 state court judgment for simple negligence. In fact, the state court jury answered "No" to the special issue of whether Respondent acted with "gross negligence." (Record, page 451.).

Petitioners' reference to a nolo contendere plea by Respondent in a criminal matter is not admissible, under Rule 410 of the Federal Rules of Evidence.

The Sam Bivone affidavit testimony, described by Petitioners in their Brief , is irrelevant and constitutes un-cross- examined testimony; further, such testimony shows that Respondent had a blood alcohol level of less than the legal limit.

As is sometimes the case even with opinions from this Court, footnotes often contain revealing facts; Petitioners' Brief at footnote "4" describes the fact that Petitioner Boyce did not have his lights operational on his boat at 11:00 p.m. on June 30, 1989, when the accident occurred. No wonder there was an unfortunate accident that night.

ARGUMENT

Supreme Court Rule 10 requires that a compelling reason be articulated in order for a Petition to be granted. No such compelling reason has been identified by Petitioners. The phrase "motor vehicle" means a car, and to consider an argument that it means something else is hardly to consider a compelling reason to invoke the jurisdiction of this Court.

With respect to the details of further argument, Respondent defers to the reported opinion of the Court of Appeals in this matter, simply for the reason that counsel could not possibly explain the soundness of the Court of Appeals' decision any more completely than did the Court itself.

Respondent would, however, emphasize the thought expressed in footnote 8 of the Court of Appeals' opinion, 71 F.3d, 1177, 1180, regarding the

time-honored principle that exceptions to bankruptcy discharge must be strictly and narrowly construed. See Perez v. Campbell, 402 U.S. 637, 91 S.Ct. 1704 (1971).

The unambiguous language of the statute should therefore "end this inquiry," and this case. United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 241, 109 S.Ct. 1026, 1030 (1989).

There is nothing in Petitioner's Brief that evidences in any way a Congressional intention that Bankruptcy Code §523(a)(9) means anything other than what it says, Senator Dole's 1984 remarks notwithstanding.

As noted by the Court of Appeals in footnote 6 of its opinion, by the Bankruptcy Court in this case, (at pages 40 and 41 of the June 1, 1994 transcript in the Record), and by Bankruptcy Judge Koger in the Williston v. Race, 159 B.R. 8957, 860 (Bankr.W.D.Mo. 1993), case, the Congress consistently uses the phrase "motor vehicle" to mean an automobile, and the phrase "water craft" or "vessel" to refer to a boat.

Indeed, the rest of the English-speaking world uses the same phrases with the same distinctions in meaning, with "motor vehicle" defined as an "automotive vehicle ... for use on the highways." Webster's Ninth Collegiate Dictionary 775 (1986).

Respondent has cited in his briefs filed in the Courts below, all of which are found in the Record, the Texas and United States statutes which similarly

define a "motor vehicle." E.g., Texas Revised Civil Statutes, article 6701d, Section 2.

As the Bankruptcy Judge in this case noted, "the vernacular understanding of a 'motor vehicle' means an automobile, something driven on the roads or the highways," (Record, page 436).

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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